

Kosher Plaza Supermarket and United Food and Commercial Workers International Union, Local 342-50, AFL-CIO. Cases 29-CA-16577 and 29-CA-16580

November 23, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On June 23, 1993, Administrative Law Judge Steven B. Fish issued the attached decision. The Respondent, the Charging Party, and the General Counsel filed exceptions and supporting briefs. The Respondent also filed an answering brief, and the Charging Party filed an answering brief and a reply brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified.³

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Kosher Plaza Supermarket, Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(e).

“(e) On request, grant to representatives of Local 342-50 access to its premises to meet with employees during worktime as it had previously granted to representatives of Local 5.”

¹ The General Counsel, the Charging Party, and the Respondent have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² The General Counsel excepts to the judge's reliance on the transfers of employees between the meat department and other departments occurring after the unlawful discharges and on a shared breakroom in finding a separate meat department unit inappropriate. We do not rely on the postdischarge transfers of employees in adopting the judge's finding. We also do not rely on the finding that meat department employees share common breakroom facilities with the other employees. We do observe, however, that the record shows that the meat department employees on occasion eat their meals with employees from other departments in the corridor near the storage room. Based on all the other circumstances cited by the judge, including transfers and interchanges occurring before the discharges, we agree that a separate unit of meat department employees is inappropriate for the purposes of collective bargaining.

³ We shall modify the judge's recommended Order regarding access to conform to his recommended remedy.

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate our employees concerning their support for or activities on behalf of United Food and Commercial Workers International Union, Local 342-50, AFL-CIO or whether they signed authorization cards for Amalgamated Local 5.

WE WILL NOT threaten our employees with discharge unless they signed authorization cards for Local 5, or invite our employees to quit their employment because of such employees' exercise of activities on behalf of Local 342-50, thereby threatening them with discharge by implying that support for Local 342-50 and continued employment with us is not compatible.

WE WILL NOT engage in surveillance of the union activities of our employees.

WE WILL NOT permit representatives of Local 5 to meet with our employees or to distribute authorization cards to the employees on our premises during worktime, while denying representatives from Local 342-50 the same rights and access to meet with such employees on worktime and on our premises.

WE WILL NOT order and instruct our employees to attend a meeting with representatives of Local 5, or to sign authorization cards for Local 5, or attend meetings conducted by Local 5 with our employees, or physically assist our employees in filling out authorization cards for Local 5.

WE WILL NOT discharge or change the work hours of our employees, because of such employees' support for or activities on behalf of Local 342-50, or because they engaged in other protected concerted activity.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the Act.

WE WILL offer Ronald Feldman, Alex Rosenberg, Sergio Alvarez, and Igor Broytman immediate and full reinstatement to their former jobs, or if these positions no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or any other rights and privileges previously enjoyed.

WE WILL make whole Feldman, Rosenberg, Alvarez, and Broytman for any loss of earnings and other benefits suffered as a result of our discrimination against them, plus interest.

WE WILL remove from our files any reference to the discharges of Feldman, Alvarez, Broytman, and Rosenberg, and notify these employees in writing that this has been done, and that evidence of these unlawful actions will not be used against them in any way.

WE WILL restore the hours and schedule that existed prior to June 1, 1992, for Ronald Feldman.

WE WILL, on request, grant to representatives of Local 342-50 access to our premises to meet with our employees during worktime as we had previously granted to representatives of Local 5.

KOSHER PLAZA SUPERMARKET

Kevin Kitchen and Jacqueline Knight, Esqs., for the General Counsel.

Ira Drogin (Totman, Young, Tunick, Nachamis, Hendler, Spitz & Drogin), of New York, New York, for the Respondent.

Herbert A. Simon and Martin Milner, Esqs. (Simon & Milner), of Valley Stream, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

STEVEN B. FISH, Administrative Law Judge. Pursuant to charges filed on June 1, 1992,¹ by United Food and Commercial Workers Union, Local 342-50, AFL-CIO (Local 342-50, the Union, or the Charging Party), the Regional Director for Region 29 issued a complaint and notice of hearing, on July 30, alleging that Kosher Plaza Supermarket (Respondent) has violated Section 8(a)(1), (2), (3), and (5) of the Act by in substance various acts of unlawful interrogations, threats, keeping employees' union activities under surveillance, rendering unlawful assistance to Amalgamated Local 5 (Local 5), discharging four employees because of their activities on behalf of Local 342-50, and refusing to recognize and bargain with Local 342-50, the majority representative of its employees in an appropriate unit. The complaint was amended by order dated February 4, 1992, to allege an alternative theory for the discharge of employee Ronald Feldman as a constructive discharge.

The trial with respect to the issues raised by the complaint was heard before me in Brooklyn, New York, on 9 days between February 23 and March 11, 1993, when the hearing was closed.

Briefs have been filed by Respondent, the General Counsel, and the Charging Party and have been carefully considered. Based on my review of the entire record,² I make the following

¹ All dates here unless otherwise indicated are in 1992.

² Although every apparent or nonapparent conflict in the evidence may not have been specifically resolved here, my findings are based on my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony. Accordingly, any testimony which is inconsistent with or contrary to my findings is discredited.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Respondent is a New York corporation with its principal place of business located at 1223 Coney Island Avenue, Brooklyn, New York, where it is and has been engaged in the retail sale of grocery products, meats, and other food products. Based on a projection of its operations since March 15, 1992, at which time Respondent commenced its operations, Respondent will annually derive gross revenues therefrom in excess of \$500,000, and will annually purchase and receive at its Brooklyn, New York facility meat, groceries, and other goods, supplies, and materials valued in excess of \$50,000 directly from points located outside the State of New York.

It is admitted and I so find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted and I so find that the Union and Local 5 are labor organizations within the meaning of Section 2(5) of the Act.

II. FACTS

A. Respondent's Operation

Respondent opened its supermarket in mid-March. It is a supermarket specializing in kosher products, and is owned by three partners, Josh Handler, Richard Scher, and Mark Neuhaus (Mutti). Respondent's operation includes a supermarket located at 1223 Coney Island Avenue in Brooklyn, as well as a warehouse located across the street. Handler was in charge of supervising the warehouse, and Scher and Neuhaus were responsible for the supervision of the supermarket itself. As of May 1992, Respondent employed between 40 and 50 employees in its supermarket and warehouse.

With the exception of Ronald Feldman, who was hired as meat department manager, all of its employees in the store were hourly paid, earning from between \$4.25 and \$7 per hour. None of Respondent's employees receive any fringe benefits. The retail store was opened from 7 a.m. to 8 p.m. from Sunday through Tuesday; from 7 a.m. to 11 p.m. on Wednesdays and Thursdays, and from 7 a.m. to 3 hours before sundown on Friday, and was closed on Saturdays.

Respondent's store is divided into several departments, including dairy, produce, bakery, grocery, paper goods, health and beauty aids, and meat. It also employed cashiers and warehouse employees.

The meat department is located in an enclosed area in the rear of the store, where Respondent employed a total of nine employees, who worked primarily in the meat department, or performed work tasks associated with the sale of meat.

Ronald Feldman as noted was hired when the store opened as the meat department manager. His salary was \$550 per week for a 40-hour workweek. The meat manager was responsible for assigning work to the other employees, making sure the showcase was filled, and determining when the remaining meat department employees were to start work and to leave. Although as noted the store opened at 7 a.m., the meat department employees frequently were told to report earlier, usually between 5:30 and 6 a.m., so that meat could be in the showcases when the store opened. At times, the

meat department employees would also work after the store closed. Feldman, who generally left early, would leave instructions as to what work would be done. Feldman was also an experienced butcher, and spent most of his time working as a butcher, cutting and trimming meat and filling special orders for customers.

Several weeks after the store opened, Respondent hired Mike Zielinski, another experienced butcher, at a salary of \$7 per hour. Shortly after Zielinski started, Zielinski told Feldman that he didn't think that Feldman was ordering meat properly. Feldman replied that Zielinski should speak to Neuhaus. Zielinski did so, and Neuhaus subsequently informed Feldman that from then on, Zielinski would do all the ordering. Although Neuhaus did not specifically tell Feldman that he was no longer manager, Neuhaus did inform the rest of the department in Feldman's presence, that from that point on, whatever Zielinski said the employees should do. Neuhaus also told other employees directly, such as butchers Alexander Rosenberg and Sergio Alvarez, that Zielinski was the meat department manager.

Thereafter, Zielinski did nearly all the ordering of meat and chicken,³ assigned the work to employees, and scheduled their hours. Employees such as Igor Broymann, a meat wrapper, if they needed time off would and did inform Zielinski and receive his permission. On occasion, Feldman would still assign work to other employees, subsequent to the above incidents, so that some employees considered both Feldman and Zielinski to be comanagers. The assignment of work by both Feldman and Zielinski did not involve extensive use of independent judgment, because the employees basically knew what to do and how to perform their work, which was fairly routine. The assignments generally dealt with how much and what types of chicken and meat to cut, so that the showcase would be filled properly, or whether employees should grind meat or pickle corned beef, or help unload a delivery. The employees were authorized on their own and did in fact go into the freezer or refrigerator to get more meat or chicken if it was needed, and would also on their own fill the showcase when they noticed that particular items were missing.

Sergio Alvarez was hired by Respondent as a butcher starting on May 6. A few days before that Alvarez had seen an ad in the paper for a butcher with Respondent's phone number. He called and asked to speak to the meat manager. Alvarez was transferred to Zielinski. Zielinski explained that Respondent was looking for an experienced butcher, with similar experience to employees who worked at Waldbaum's supermarkets. Alvarez replied that he in fact had worked at Waldbaum's as a butcher and Zielinski instructed Alvarez to come to the store. Alvarez did so, and Zielinski sent him to speak to Feldman.

Feldman took Alvarez' phone number and address, but informed him that the position had been filled. The next day, Alvarez was called by Feldman and told that a butcher's position was available.

When Alvarez reported for work on May 6, Feldman told him that his salary would be \$6 per hour. Zielinski, however, told Alvarez precisely what he would be doing, and what work he would be performing. Prior to Alvarez being hired, Feldman had recommended to Neuhaus that Respondent hire

Alvarez. Neuhaus after discussing the matter with Scher concurred, and gave Feldman the authorization to inform Alvarez that he would be hired by Respondent at a salary of \$6 per hour.

Zielinski, in addition to the aforementioned responsibilities of assigning work to employees, scheduling hours, and ordering meat, would also spend most of his time cutting and trimming meat and filling special orders. Zielinski and Feldman, as the most experienced and most skilled butchers, would perform the more difficult jobs, which involved the extensive use of the bandsaw.

In this connection, it is noteworthy that Respondent, unlike many traditional butcher shops, and some supermarkets, does not purchase meat in full or half sides and does not have a "hook and rail" system for transporting such meat. All the meat that Respondent receives, that its employees perform work on, arrives in vacuum packed boxes, which has already been koshered and separated into smaller pieces (primal cuts), consisting of necks, shoulders, and ribs. For the most part, the meat is received by Respondent deboned, which requires only that the butchers cut it into smaller pieces sometimes only with a knife, without using the bandsaw, trim the fat, clean off some bone chips, and send it to the wrappers for wrapping and pricing.

For a few types of meat such as middle chuck, which is used for export ribs, and lamb, the bandsaw must be used and deboning is required to be performed. On one occasion, at Passover, Respondent's busiest time of the year, meat was so scarce, that Respondent's supplier ran out of deboned shoulders and necks. Thus, Respondent was forced on that occasion to order meat with bones, or else it would not have enough meat for its customers. Thus at that time only, the boning of the meat became more frequent by Respondent's employees.

In addition to Zielinski, Feldman, and Alvarez, Respondent also employed Alex Rosenberg who was hired on March 17, also as a butcher. Rosenberg was hired directly by Neuhaus, and received a salary of \$7 per hour. Rosenberg and Alvarez had fewer years of experience than Feldman and Zielinski as butchers, so they used the bandsaw less frequently, usually when Feldman and Zielinski were not available.⁴

Alvarez and Rosenberg would spend most of their time cutting meat into smaller pieces with a knife, and trimming off the fat. Sometimes, after meat was cut on the bandsaw by Feldman or Zielinski, it would be given to Alvarez or Rosenberg to trim the fat off. In this connection, Alvarez conceded that trimming fat off meat was a rather simple task, which even a total beginner can learn to do in less than a minute of training.

Another function performed by the butchers employed by Respondent was the grinding of meat. This consists of putting the trimmings of meat into a machine, and watching the meat come out as chopped meat. Such work requires no skill or training, and in fact this work was at times performed by unskilled wrappers or the chicken helper-porter in the meat department, as well as on some occasions by employees outside the meat department.

Additionally, Respondent's butchers, more specifically Rosenberg and Zielinski, performed the job of pickling

³ On rare occasions, when Zielinski was not present, Feldman would place an order if Respondent ran short of a particular item.

⁴ Respondent had only two bandsaws, and one was used primarily for cutting chicken by the chicken cutter.

corned beef. This task which actually was not performed inside the meat room, but in the corridor outside the department, involved the mixing of chemicals with water into a solution, sticking needles into the meat while pressing a lever while the solution went into the beef. The record does not establish how much training or experience is required to perform this job.

Respondent also employed during May 1992 Joseph Izhak as a chicken cutter, and Yakov Fardman as a helper of Izhak and a porter-all around man. Izhak cut the chicken, for the most part using a bandsaw, and occasionally would use a knife to trim off the fat or make further cuts. His salary was \$5 per hour. Most of the cutting of the chicken for the bandsaw required only a single cut, which cut the chicken part, i.e., bottoms in half. The chicken would then be placed on the tray by Fardman, the helper, and then was wrapped and priced by the wrappers.

Fardman, whose salary was also \$5 per hour, in addition to placing the chicken on the trays after they are cut, would also assist Izhak by bolting up the chickens. Fardman would also bring the chickens out from the meat room, and put them into the showcase, and assist with the unloading of meat and chicken when it was delivered. Fardman also was the porter and all around man, wherein he would clean up the meat department, transfer the chickens from the U-boat (which transports the chicken from the truck into the store) to the freezer, and occasionally help the wrappers wrap meat or chicken. Additionally when necessary, Fardman would be called on to help out with bagging of groceries outside the meat department with cashiers. From time to time, Respondent would also utilize Izhak to drive Respondent's van and either pick up an order for Respondent, or to make a delivery to customers of groceries, which may or may not include meat or chicken.

Respondent also employed two full-time wrappers during the month of May, Igor Broytman⁵ and Alexander Kassam (known as Sasha). They would wrap both meat and chicken, using a very simple mechanical device which stretches a plastic wrap over the product to be wrapped. The wrappers would also weigh and price the meat and chicken and bring them to the display cases. There is no dispute that meat wrapping requires little or no skill. Indeed, Broytman conceded that it took him 10 or 15 minutes to learn how to wrap meat. The wrappers also assist in helping to unload deliveries of meat and chicken from the truck.

The final employee employed by Respondent who works primarily in the meat department is Schlomo Taub, who was Respondent's "Mashgiach," who is responsible for making sure that all food sold in the store is kosher and conforms to the kosher laws. However, because at Respondent's facility, the meat and chicken is delivered already koshered, the koshering procedure called "trabering" having been performed, Taub spends little of his time performing normal Mashgiach functions, which usually involves the observation of these procedures. However, it is essential for Respondent to have a Mashgiach on the premises, so Taub was hired at a salary of \$4.25 per hour. His Mashgiach responsibilities consist solely of checking the boxes of meat and chicken that come in to see if the proper kosher seal is present. His other

functions in the meat department include ordering meat, taking special orders from customers (either in person or by phone) and either filling them himself if no butchering is required, or transmitting the special order to one of the more experienced butchers, where it is necessary to cut the meat in order to fill the order. Taub is also responsible for making sure that the showcase is filled, and he will either fill it himself, or instruct one of the other employees to bring what is needed. Taub also is responsible for putting prepackaged cold cuts (which require no work by butchers) into the showcase for sale.

On rare occasions, when Respondent is very busy, Taub will help out wrapping meat. In that connection, when wrapper Broytman was hired, it was Taub who informed him that he would be employed, and who showed Broytman how to wrap meat and chicken. Although Taub spends the majority of his time in the meat department, performing the tasks described above, he also spends a substantial amount of his time outside the meat department performing various functions in other parts of the store. These functions include signing on behalf of Respondent for the deliveries of different products, closing the cash registers, making sure the aisles are filled with different products, and even assisting in packing and bagging groceries at the cashiers, when Respondent gets busy.

As noted above, Respondent's employees from time to time would be called on to fill special orders for either meat or chicken. These special orders were necessary when a customer wanted meat sliced to a different thickness or a different size package of meat, chopped meat, or chicken than appeared in the showcase. These special orders, which are taken either by phone or in person were generally taken by Taub, Feldman, or Zielinski. Most of the time either Feldman or Zielinski would actually fill the order, i.e., cut the meat to the specified size, or inform the employee who was grinding chopped meat that a different amount was required. Where a special order involves chicken, Izhak generally would be called on to cut the chicken in the desired manner. These special orders filled by Respondent's employees amounted to approximately 5 percent of Respondent's total meat sales. Occasionally, a special order for chicken would involve requests for a full case of chickens. These special orders require no cutting or butchering, but are filled by various meat department employees bringing the case of chickens from the freezer or refrigerator to the customer.

Respondent's meat and chicken showcase also included 30 to 40 different types of prepackaged meats and poultry, such as salami, bologna, corned beef, pastrami, frankfurters, turkey parts, ducks, turkey pies, as well as a full line of Empire frozen chickens. These prepackaged products require no work from meat department employees, other than putting a price on the product, and placing the products in the showcase, either directly from the deliveries, or from the freezer. Thirty percent of Respondent's meat department sales are derived from the sale of these prepackaged products.

The record reveals substantial evidence of employee interchange into the meat department, from other areas of the store. These instances occurred more frequently after Respondent terminated wrappers Broytman and Kassam on May 31. However, even prior to that time, Respondent would assign employees from other departments to help out in the meat department when the meat department became busy,

⁵ Broytman's salary was \$5 per hour. The record does not disclose Kassam's salary.

which would be most often Thursdays,⁶ which was Respondent's busiest day in the department, because it was the day before the Jewish Sabbath begins.

On a daily basis, both before and after the discharges of Broytman and Kassam, Respondent would assign various nonmeat department employees, such as warehouse employees Christian Mojica and Joseph Tapia, or Ollie the porter, to assist meat department employees in unloading deliveries of meat and chicken, and bringing the products into the store.

Employee Danny, sometimes referred to as Dockie, was regularly assigned to the dairy department. Prior to the discharges of Broytman and Kassam, he would help out in the meat department on an as-needed basis sometimes as much as two or three times a week. He would primarily be used as a wrapper, but on occasion he would also be assigned to grind meat, to fill the showcase, or to help with deliveries.

After the discharge of Broytman and Kassam, for some unspecified period of time until a new full-time wrapper was hired, Danny spent from 2 to 7 hours a day, up to 3 days a week in the meat department, wrapping meat and chicken.

Respondent also employed an employee named Anna whose regular position was a cashier. However, when Respondent was busy, sometimes as much as twice a week, she would be asked to help out as a wrapper in the meat department. After the discharge of Broytman and Kassam, Anna was transferred permanently into the meat department as a wrapper. She worked full time in that capacity for a while, but did not care for the work, so at her request, she was transferred back to her prior position as a cashier.

Respondent also employed an employee by the name of Yaakov Sheinhouse, who is referred to on the record by employees as the "cookie man." His primary job was working in the cookie aisle, making sure the shelves were stocked with cookies. However, prior to the discharge of Broytman and Kassam, when Respondent was busy, he would be assigned to help out in the meat department, where he would primarily take meat and chicken out to fill the showcase, but would also on occasion be asked to grind meat or to help the chicken cutter.

After the discharge of Broytman and Kassam, Sheinhouse was assigned to work in the meat department on a more regular regular basis, and would spend from 3 to 4 hours a day, three or four times a week performing the above tasks in the meat department.

Employee Avram Kleinman was hired by Respondent to work in the bakery department and as an "all around" man, who helped out with deliveries and in stocking the grocery shelves. Both before and after the discharge of Broytman and Kassam, he would also be called on to help out in the meat department mainly on Thursdays when Respondent was most busy, where he would take out empty boxes, pack chicken, and bring meat and chicken to the showcases. From time to time, he would also be asked to grind meat, which he would perform on an as-needed basis.

Larry Tirado was the manager of the dairy department, who spent most of his time performing his responsibilities in that department. However, when Respondent was busy, both before and after the discharge of Broytman and Kassam, he worked in the meat department filling the showcase, and

wrapping and grinding meat, usually for about 2 hours at a time.

Respondent also employed Elizabeth Henry, primarily as an employee in the health and beauty aids department, where she was in charge of ordering the merchandise for these items, which were located on aisle five of the store, and was responsible for stocking the shelves of those products. When Respondent was busy, she would also help out in the meat department, as a wrapper. She was terminated for stealing meat in late May.

Finally, the record reveals that Respondent also employed a porter, whose name was not disclosed. This porter worked "part-time" in the meat department, helping out Fardman, performing maintenance tasks, and "bolting" up the chickens. The record does not disclose how frequently this porter worked in the meat department, or whether he worked there on a regular basis.

Additionally, employees in the meat department would help out in other parts of the store. When the store was busy, meat department employees would help other employees unload deliveries for other departments, and when products other than meat were placed on U-boats and needed to be pushed inside the store, meat department employees would frequently assist employees from other departments in pushing the U-boats, which could be extremely heavy and difficult for one person to move. Also, when necessary, Respondent has asked Izhak, normally the chicken cutter, to drive Respondent's van and either make a delivery of an order (which may or not include meat) to a customer, or to pick up an order of a product from a supplier and return it to the store. Izhak, prior to being employed by Respondent, had worked as a deliveryman. Finally, when Respondent was busy, they would assign either their wrappers or helper-porter Fardman to help bag groceries at the cashier's. In fact, Fardman started out as a bagger and was transferred to the meat department shortly after he commenced his employment.

The record also reveals frequent daily contact between meat department employees and employees in other parts of the store. Employees from all departments including the meat department would eat lunch together either in a storage area inside the store, or in a side room located in the warehouse, across the street from the store.

Additionally, as noted above, the pickling of the corned beef was performed in the corridor outside the meat department, which is located right next to the walk-in refrigerator used to store dairy products. Thus, when dairy department employees would need to go into that refrigerator to either bring in or take out dairy products, these employees would frequently stop to watch the corned beef being pickled, which is a process that some of them had not seen, and converse with the meat department employees, usually Rosenberg doing the pickling. Because of the close quarters, the employees would often tell Rosenberg to watch his back, while they were going in and out of the refrigerator, and at times would request that Rosenberg stop or move his pickling work, so they could get in and out.

Respondent also had a walk-in refrigerator which contained both chickens and vegetables. Thus meat department and fruit and vegetable department employees come into contact with each other on a daily basis in this refrigerator, which requires constant cooperation between the employees

⁶ At times these assignments would be made on Wednesday evenings, another busy time for Respondent.

in terms of rotating where the chickens or vegetables are to be stored inside the refrigerator.

The employees in the meat department all wore white gowns and aprons supplied by Respondent. However, there were some other employees in other departments such as dairy and produce and even the paper department, who also requested and received from Respondent white gowns and/or aprons to be worn during the workday.

The meat department employees generally, except for Feldman, would report to work before the store opened, and would frequently continue to work past the time that the store closed. Some employees from other departments such as dairy or produce would also at times report to work before the store opened and/or continue to work after the store closes.

All employees in the meat department, except for Feldman, were salaried employees, with salaries ranging from \$4.25 to \$7 per hour, which is similar to the salary range of the other 40 employees employed by Respondent during May 1992. Respondent provided no pension plan, health benefits, or any other fringe benefits to any of its employees.

As related above, the overall supervision of the store is divided between Neuhaus and Scher, with Handler supervising the warehouse. Neuhaus is the owner of Respondent who is in charge of the meat department, where he goes several times a day to make sure that everything is okay, and informs the meat department that the showcase needs to be filled. All hiring and firing decisions in the meat department are and have been made by Neuhaus,⁷ as well as the authority to grant time off, to grant raises, and to transfer employees in and out of the meat department.

George Joyce, an organizer for the Union, testified that the Union had traditionally represented separate units of meat department employees in kosher and nonkosher supermarkets located in the metropolitan area for many years. In support of Joyce's testimony, the General Counsel introduced two unsigned form contracts, which Joyce further testified had been executed by various kosher and nonkosher butcher shops and supermarkets in the metropolitan area. The first such contract which ran from January 1, 1990, to December 31, 1992, on its face covered a unit of butchers, wrappers, cashiers, delivery clerks, and drivers. An amendment to the contract added a new category of employees, utility workers.

According to Joyce, this contract covers kosher supermarkets and butcher shops represented by the Union. He asserts that the Union represents some 70 kosher butcher shops and 5 or 6 kosher supermarkets in the area. He named Glatt Mart, Chaimowitz, and Kosher City located in Brooklyn, Little Neck, and Great Neck, Long Island, respectively, and Super Sol located in Queens as the kosher supermarkets represented by the Union under the contract described above.

Joyce further testified to a distinction between butcher shops, which are essentially shops which primarily sell meat, but will also sell a small amount of grocery products, with perhaps one row or aisle of grocery items, and supermarkets. Butcher shops would normally employ between 5 and 10 employees. According to Joyce, it is in these kosher butcher

shops where the Union represents cashiers, clerks, drivers, and utility workers, in addition to butchers and wrappers. However, although conceding that the contract on its face sets forth no distinction between butcher shops and supermarkets, Joyce insists that at the five or six supermarkets represented by the Union, the cashiers, delivery clerks, drivers, and utility workers (if there are any such employees) are represented by other labor organizations and not by Local 342-50.

Joyce also identified another unsigned (by any employer) form collective-bargaining agreement, running from October 15, 1989, to October 17, 1992, which he asserts had been in effect between the Union and a number of nonkosher supermarkets, such as Waldbaum's, Pathmark, and King Kullen. The employees covered by this contract included meat department heads, journeyman meatcutters, apprentice meatcutters, wrappers, delicatessen appetizing department heads, delicatessen-appetizing clerks, seafood department heads, and seafood clerks. Joyce testified that the Union's representation of these employees is essentially consistent with the contract, except that at some stores such as Waldbaum's, the deli clerks and department heads are also represented by another labor organization.

Neuhaus testified, without contradiction, as to his knowledge about the operations of two of the kosher supermarkets mentioned in Joyce's testimony as being represented by the Union. According to Neuhaus, both Glatt-Mart and Kosher City are supermarkets that utilize a hook and rail system, rather than purchase prepackaged meat, as does Respondent. Moreover, these supermarkets also kosher their meat on the premises, which requires much more skill on the part of the butchers working for these stores, than is required of Respondent's employees.

B. The Organizing Campaign

The Union began organizing Respondent's meat department employees in early May. Joyce was the union official who solicited most of the authorization cards from employees. Joyce would park his car in front of the premises and attempt to solicit employees as they leave and come into work.

The first card obtained by Joyce was signed by employee Joseph Izhak on May 7. This card as well as all the cards given to employees authorizes the United Food and Commercial Workers International Union, AFL-CIO or its chartered local unions to represent the employee signing for the purposes of collective bargaining. Izhak signed the card in Izhak's car located near the store. Joyce gave Izhak his business card, which identifies him as vice president-representative of Local 342-50 UFCW, and includes the address and phone numbers of the Local. Izhak took Joyce's business card and the authorization card, and signed the latter card, after Joyce told Izhak that by signing the card he would be authorizing the Union to represent him in a collective-bargaining agreement. Izhak returned the card to Joyce after signing it.

The next day, May 8, Joyce and Richard Abondolo, the Union's area director, approached employee Ronald Feldman in Respondent's parking lot. They asked Feldman if he would be interested in the Union. Feldman read the card, said yes, signed it, and returned it to the union officials.

⁷ As noted above, the record reveals one instance where Feldman interviewed Alvarez and effectively recommended that he be hired by Respondent, with Neuhaus making the final decision to do so, after he in turn consulted with Scher.

On the same day, May 8, Alexander Rosenberg was approached by Joyce in the street as he was coming into work. Joyce handed Rosenberg a card and his business card. Joyce asked Rosenberg to sign the card so that the Union could represent the employees in the meat department. Rosenberg signed the card and returned it immediately to Joyce.

Sergio Alvarez signed his card on May 11 after being asked by Union Representatives Cookie and Gerard to sign the card for the Union to come into the store.

On May 27, Joyce spoke to Alexander Kassam in Joyce's car, parked around the corner from Respondent's premises. Joyce gave Kassam an authorization card, plus a business card. He asked Kassam to sign the authorization card to authorize Local 342-50 to represent him in collective bargaining. Kassam filled out the card, signed it, and gave it back to Joyce.

The next day, May 28, Joyce gave an authorization card as well as his business card to Igor Broytman, again in Joyce's car. Joyce explained that by signing the authorization card, he would be authorizing Local 342-50 to represent him in collective bargaining. Broytman also filled out, signed, and returned the card to Joyce at that time.

Finally, on May 29, at a meeting of employees of Respondent, Joyce, Abondolo, and Lisa O'Leary, another union official, held on East 10th Street, around the corner from Respondent's premises, Joyce handed an authorization card to Yakov Fardman, along with his business card. Joyce explained that by signing the authorization card, Fardman would be authorizing Local 342-50 to include him in a collective-bargaining agreement. Fardman filled out, signed, and returned the card to Joyce at that time.

C. The Alleged Unfair Labor Practices

As noted above, Joyce was the primary organizer for the Union at Respondent's facility, and he obtained authorization cards from employees throughout the month of May. Joyce would park his car in front of or around the corner from the store and attempt to speak to employees either in his car, or outside the car, as they were going to and from work. Neuhaus admitted that he had observed Joyce during this period across the street from the store in his car, and that he also saw Joyce writing things down and speaking to the workers. According to Neuhaus, although he had not been introduced to Joyce, he "figured" based on a "sixth sense," that Joyce was speaking to the workers on behalf of "some kind of union."

On or about May 24, Joyce was waiting in his car at 6 p.m. to talk to employees as they were leaving work. He saw Alex Rosenberg and offered to drive Rosenberg home. Rosenberg accepted Joyce's offer. After driving awhile, Joyce noticed that a small silver car appeared to be following them. Joyce asked Rosenberg to turn around and see if he could identify the occupants of the other car. Rosenberg did so, and informed Joyce that Josh Handler, one of Respondent's owners, and another employee were in the car. Rosenberg told Joyce that he didn't want Respondent to know where he lived. Joyce began to take evasive action, such as making U-turns and doubling back, and drove for an hour until stopping at a bar on Neptune Avenue in Brooklyn. The car with Handler as an occupant followed them all the way and parked across the street from the bar, where Joyce had parked his car. During the time that they were being fol-

lowed, as well as while Handler's car was parked, Handler was observed by Rosenberg speaking into a walkie-talkie.

Rosenberg told Joyce that he was afraid to stay in the car alone, so they both went into the bar so that Joyce could call the union office. Joyce spoke to Abondolo and told him that they were being followed by Rosenberg's boss, and Rosenberg was afraid to go home. Abondolo instructed Joyce to bring Rosenberg to the Union's office on Staten Island. Joyce then pulled away from the bar, and drove to the Belt Parkway, toward the Verrazano Bridge. The car continued to follow them until Joyce drove onto the ramp of the bridge which goes into Staten Island, when the car continued driving on the parkway.

The next day, May 25, Rosenberg confronted Neuhaus at work, and asked why he had been followed and told Neuhaus that he didn't like it and was going to make a police report. Neuhaus replied, "This is the American way."⁸ Rosenberg responded, "This is the American way, you teach me good."

That same evening, once again Joyce gave Rosenberg a ride home at around 6 p.m. On this occasion, as Joyce was pulling away from the front of the store, a security guard employed by Respondent, began to follow them in a car. Joyce, not wanting to go through another incident like the day before, made a sharp turn around the corner. The security guard followed and was so close to Joyce that they nearly got into an accident. Joyce then pulled into the driveway of a gas station. The security guard kept driving, and did not continue to follow them.

Neither the security guard nor Handler testified, and Respondent introduced no specific or direct evidence as to why it followed Joyce on either of these occasions. Respondent did introduce some general testimony from Scher that Respondent had concerns about security and theft, and they were always concerned with suspicious vehicles outside the store. However, they did not testify that either of the two incidents described above were motivated by security concerns. Scher did testify that the security guard Scher employed by Respondent was a retired policeman, and had a free hand to check out anything that he believed was suspicious. He also testified that Respondent gave no instructions to the security guard to follow employees who might be engaged in union activities, but only that he must be alert to "make sure there's no problem."

In the afternoon of May 27, while the meat department employees were working, Zielinski interrupted them, and instructed the employees to stop working and pay attention. Zielinski informed the employees that representatives from Local 5 would be coming into the department to talk to the employees about joining that Union. Zielinski added that the bosses wanted everyone to sign cards for this union. Rosenberg protested that Local 5 was not a butchers' union, and Alvarez stated that he belonged to Local 342-58. Zielinski responded that if employees did not sign cards for Local 5, they would be fired.

Shortly thereafter, two representatives from Local 5 came into the meat room, accompanied by Neuhaus. The Local 5 representatives discussed some benefits of representation by Local 5, and distributed authorization cards to employees. Some employees signed cards and returned them to Zielinski.

⁸Rosenberg was a recent arrival from Russia.

Zielinski looked at Feldman, and Feldman said that he was not interested. Neuhaus, although present during the meeting, did not say anything while the Local 5 representatives were present.

About a half hour after the Local 5 representatives left, Neuhaus returned to the meat department. He asked who had not signed cards for Local 5, and asserted that all those who had not signed the cards would be fired. At that time, Broytman signed a card for Local 5, and returned it to Zielinski. Neuhaus also asked Zielinski to give him the cards that he (Zielinski) had collected.

Rosenberg replied to Neuhaus that he had not signed a card for Local 5. Neuhaus took the card from Rosenberg and began to fill it out for him. Neuhaus asked Rosenberg for his social security number, and Rosenberg replied that his social security card was at home. Neuhaus instructed Rosenberg to sign the card and bring his social security card the next day. Rosenberg scratched his signature on the card and gave it to Neuhaus.

Alvarez had placed the Local 5 card in the pocket of his white gown. Neuhaus reached into Alvarez' pocket and removed the card. Neuhaus instructed Alvarez that he had to sign the card. Alvarez replied that he didn't have his social security number. Neuhaus replied that Alvarez should sign the card anyway, and bring the social security number the following day. Alvarez complied with Neuhaus' instructions, signed the card, and gave it back to Neuhaus.

The next day, Neuhaus came into the meat department and asked Rosenberg for his social security number. Rosenberg responded that he didn't have it. Neuhaus looked mad and walked out of the room.

My findings with respect to the events of May 27 is based on a compilation of the credited testimony of employees Broytman, Alvarez, Feldman, and Rosenberg. Although the record reveals some inconsistencies between their versions of the meeting, overall I found them to be essentially mutually corroborative in most material respects, and much more believable than the insincere denials of Zielinski and Neuhaus. In my view, Neuhaus' testimony that he had no idea or knowledge that Local 5 representatives were speaking to his employees is simply incredible. Particularly, because Respondent itself adduced evidence of how security conscious it was, and how it instructed its security personnel to be on the alert for suspicious behavior, I cannot believe that representatives could have simply walked into the meat department during working hours to meet with its employees without Respondent's permission or at least knowledge. Indeed, if Respondent had not known about it, Zielinski as a manager of the meat department would certainly have questioned whether the Local 5 representatives should be there, or informed Respondent's officials of what had happened. Because Zielinski did not even assert that he took either of these steps, I reject his contrived denials, as well as Neuhaus' professed lack of knowledge of the meeting, and his denials that he made the statements attributed to him by the employees, as detailed above.

On May 27, the Union filed a petition in Case 29-RC-7992 seeking certification as the collective-bargaining representative for Respondent's employees in a unit of "all full-time and regular part-time meat department employees."

On May 28, O'Leary and Abondolo plus another representative of the Union, Anna Rosa, entered Respondent's

store. They asked to speak to the owner, and were directed to an employee named Mike. Abondolo told Mike that he wanted to speak to one of the owners about the Union. Mike replied that he was not an owner, and couldn't talk to them. Abondolo asked Mike to call and inform one of the owners that he was there to speak about the Union. Five minutes later, Mike returned and informed Abondolo that he had spoken to an owner who had said that he didn't need to talk to Abondolo, because they already had Local 5 at the store. Abondolo asked Mike what time did the owners usually arrive, and was told 8:45.

The union officials then left the store and waited outside. At about 8:45 a.m., Scher arrived and went into the store. The union representatives followed him into the store, and observed Mike talking to Scher and pointing to the union officials. Scher came over to them and asked if he could help them. Abondolo handed Scher his business card, and identified himself as a representative of Local 342-50. Abondolo continued that Local 342-50 represented a majority of Respondent's employees in the meat department, and that he wanted the opportunity to go through the store to speak to employees, just as representatives of Local 5 had been allowed to do the day before. Scher replied that he was not going to allow the union officials to do that.

Abondolo then mentioned that the Union filed a petition with the NLRB, that he was demanding recognition on behalf of Local 342-50 for the meat department employees, and that it was his position that Local 342-50 and not Local 5 represented the employees. Scher responded no, no, no, as he was picking his teeth with Abondolo's business card. Abondolo became agitated by that action, and told Scher that he was being rude and disgusting. Scher continued saying no, no, no and picking his teeth with the card. The union officials then left and returned to the union office.

O'Leary then prepared a telegram to be sent to Respondent, which is dated May 29. The telegram stated that Local 342 demanded recognition as the exclusive bargaining representative for Respondent's meat department employees and would prove majority status to a mutually selected third party. The telegram was delivered to Respondent on May 29 at 5:47 p.m.

The above findings are based on the credited testimony of O'Leary, plus the delivery report from Western Union. I reject the testimony of Scher that no demand for recognition was made by Abondolo or received by telegram. I rely on the report delivery form of Western Union as probative evidence that the telegram was received by Respondent, contrary to the testimony of its officials.

On May 29, the union representatives met with meat department employees around the corner from the store, during their lunch hour. Present were Rosenberg, Broytman, Alvarez, Feldman, Kassam, Fardman, and Izhak. Joyce and O'Leary were present for the Union. O'Leary explained that the Union had filed a petition for an election, and explained the procedures and processes. Employees asked about the presence of Local 5, and asserted that they had been threatened with discharge if they didn't sign Local 5 cards. They also asked if they could be fired for failing to so sign, or if they signed cards for Local 342-50. O'Leary explained that

the Union had already filed charges⁹ about these matters, and added that it would file additional charges with the Labor Board if any employees were fired because of their support for Local 342-50 or if they did not sign Local 5 cards. O'Leary also added that if the employees were fired, the Union might also call a strike. In that connection, O'Leary explained the differences between an economic strike and an unfair labor practice strike, and added that if the employees were fired as Respondent had threatened, an unfair labor practice strike was one of the Union's options, in addition to filing charges.

During the course of the meeting, Scher and his son drove up the block in a car toward the group of employees. The car slowed down as it passed the employees and Scher's son was speaking into a walkie-talkie. After Scher passed the group of employees, the car pulled into a driveway, made a U-turn, drove past the employees again, and drove away. Five to ten minutes later, the car returned again with Scher and his son speaking into the walkie-talkie, and again drove past the employees, made a U-turn, and drove away.

Scher admitted driving past the employees on that date, although he claimed that he did so only one time.¹⁰ Scher asserts that on that day his son Menachem reported to him that he had observed a group of Respondent's employees on the street along with some people in suits. Menachem continued that something looked "suspicious"¹¹ and that he (Scher) should check it out. When Scher drove past the employees, he conceded that he recognized Joyce and O'Leary and others with the employees as union officials. Scher also testified that he did not discuss the incident with either of his two partners. Significantly, Neuhaus contradicts Scher on this point, and admits that Scher "flew out" to his car with his son. Neuhaus asked Scher what had happened when he returned. Scher told Neuhaus that his son had informed him that something suspicious was going on and his workers were together in the street. Scher further informed Neuhaus that he had gone to check it out and saw that the butcher employees were meeting with representatives of Local 342-50.

After the meeting, Feldman returned to work, where he was approached by Neuhaus. Neuhaus informed Feldman that he wanted to talk to him about his hours. Feldman replied that it would be better if they had the discussion on Monday, June 1, Feldman's next scheduled day at work. Neuhaus agreed.

On Sunday morning, May 31, Rosenberg was reporting to work at 6 a.m., when he was asked to come into Joyce's car, where Joyce and O'Leary were present. O'Leary gave him an envelope containing unfair labor practice charges that the Union had filed, as well as the petition, and asked him to

give the envelope to his boss. She instructed him to tell the boss that these were the charges that the Union had filed.

Rosenberg complied with O'Leary's request, and in the meat department attempted to give Neuhaus the envelope. Neuhaus refused to accept it and asked Rosenberg to come into his office. Rosenberg replied that he wanted to speak in the meat room in order that everyone would know what was happening. Neuhaus left.

A few hours later, Neuhaus asked Rosenberg to talk with him. Rosenberg went with Neuhaus outside the store, where Scher was present as well. Neuhaus asked if Rosenberg wanted to work in the Union? Rosenberg said, "Yes." Neuhaus responded that he should go to another city or State if he was looking for a union job. Rosenberg replied that he wanted to stay here in Brooklyn and that he liked Brooklyn. Scher concluded the conversation by observing, "this is not Russia." Rosenberg then returned to work.¹²

At around 9:45 a.m., on May 31, Broytman was informed by Kassam that Kassam had just been fired. At 10 a.m. Taub asked Broytman to report to Neuhaus' office. In the office, Neuhaus asked Broytman if he signed any papers with any other union.¹³ Broytman said, "Yes." Neuhaus then informed Broytman that he was fired. Neuhaus gave Broytman a check for 2 days' pay, and said good bye.

Neuhaus denied that he knew whether Broytman was a member of any labor organization, and asserts that he was fired because he refused and failed to fill out I-9 and W-2 forms.¹⁴ According to Neuhaus, he had been after Broytman to fill out the forms for several weeks, and Broytman would respond that he would get to it. Finally, on the date of the discharge, Neuhaus asserts that he again confronted Broytman with his failure to sign these forms. When Broytman again failed to sign the forms, Neuhaus allegedly told him, "if you cannot fill out the card, I cannot keep you here at the store." At that point, Neuhaus claims Broytman left.

In this connection, Neuhaus further testified that an office employee named Peggy had given him a list of employees who had not signed these forms, and he would from time to time ask other employees about their failures to sign the forms as well. Neuhaus could not, however, recall the names of any other employee to whom he spoke about the matter, nor could he explain why he decided to speak to Broytman about it on that particular day, or why he decided on that day to insist that Broytman sign or be terminated. His only explanation was that Broytman happened to be walking by and Neuhaus saw him, so Neuhaus asked him about it.

However, the record discloses that employees Alvarez, Rosenberg, and Kassam never filled out either of these forms, and it does not appear that Neuhaus ever asked them about it. More significantly, employee Avram Kleinman who

⁹The Union's initial charge in Case 29-CA-16577 was dated 5/29/92, although not filed until 6/1/92. It appears that these charges were mailed to the Board on 5/29. It alleges 8(a)(1) and (2) violations of threatening employees with termination unless they signed cards for Local 5, and the denial to Local 342-50 the same opportunity to contact employees that Respondent afforded Local 5.

¹⁰I have found above that Scher drove past the employees twice, based on the credited testimony of Broytman and Rosenberg.

¹¹Scher further claimed that he thought there may be a fight or some trouble, but admitted that his son did not say there was a fight going on.

¹²I credit Rosenberg's testimony in this regard over the denials of Scher and Neuhaus. I find Rosenberg's testimony to be believable with a ring of truth to it, and not likely to have been made up.

¹³Note that Broytman had previously signed a Local 5 card at Neuhaus' insistence several days earlier.

¹⁴An I-9 form is an immigration form entitled "Employee Eligibility Form," wherein the employee must state that he is a citizen or a lawful alien. Although Neuhaus referred to a W-2 form, it appears that he really meant a W-4 form which is filled out by the employee setting forth a social security number and the amount of exemptions to be taken by the employee.

was employed by Respondent at least by May, and perhaps earlier, did not sign his W-4 form until June 3, and his I-9 form until August 5, 1992. Employee Yakov Sheinhouse also worked for Respondent since at least May, and his I-9 form was not filled out until August 4. Finally, employee Larry Tirado who also worked for Respondent since at least May, if not earlier, did not sign his W-4 or I-9 form until September 17. None of the above employees were terminated by Respondent, for not having promptly filled out these forms.

As noted above, on Friday, May 29, Neuhaus had informed Feldman that he wanted to discuss Feldman's hours, but had agreed to postpone the discussion until Monday, June 1, at Feldman's request. On June 1, as agreed on, Neuhaus and Feldman had their discussion concerning hours. Neuhaus informed Feldman that the store was getting busier and that he needed Feldman to work more hours. He stated that he wanted Feldman to stay later at night, until 8, 9, or 10 o'clock, whatever it took, when the store got busy. Feldman reminded Neuhaus about his long commute from Scarsdale, and the fact that at hire they had agreed on a 40-hour week for a set salary. Neuhaus replied that the circumstances were now different, the store was getting busy at night, and he needed Feldman there for more hours.

Feldman then asked if Neuhaus would be paying him overtime for these additional hours. Neuhaus responded, "No." Feldman asked if Neuhaus expected him to work overtime without extra payment? Neuhaus answered, "You'll have to do what you have to do." Feldman then asked if this means he was fired? Neuhaus replied, "No, but you don't want to work the hours, so it is your decision." Neuhaus at that point agreed to give Feldman a week's pay, and Feldman left.

Sometime in June, Feldman filed for unemployment insurance. Feldman called Neuhaus on the phone. He told Neuhaus that he was filing for unemployment insurance, and rather than saying that he was fired was going to put down that no work was available for him. Neuhaus said, "Fine." Subsequently, Feldman confirmed this conversation in a letter mailed to Neuhaus, postmarked June 15, where he affirmed that he told unemployment that the reason for his leaving was lack of work, and his last day of work was June 5. Feldman explained that he used the June 5 last day of work, because he received an extra week's pay from Respondent.

According to Neuhaus, the very first week after Respondent opened, he had a problem with Feldman's hours, particularly on Wednesday and Thursday evenings, its busiest nights. Neuhaus would find the shelves would be empty on these nights, and he attributed this to Feldman's absence, because he normally left at 5 p.m. Neuhaus asserts that he spoke to Feldman about the problem on these nights, and for nearly every week until Feldman finally left on June 1. Neuhaus asserts that Feldman recognized the problem, and replied that he would see what he could do, but in fact he continued to leave at 5 p.m., and problems continued in the department. Finally, according to Neuhaus, he "reached the point where I couldn't" work with Feldman anymore, and he had to insist on Feldman's working the extra hours.

Although I have credited Feldman's version of their termination conversation, as well as the phone call concerning unemployment, as related above, I do credit Neuhaus' testi-

mony to the extent that he asserts that he had prior conversations with Feldman about his hours. In this regard, I note the corroborative testimony of Zielinski, as well as my belief that Feldman's absence on busy evenings would be likely to cause shortages in the showcase. Therefore, I find consistent with Neuhaus' testimony, and contrary to Feldman's denials, that Neuhaus did prior to June 1 complain to Feldman about his hours, and that Feldman agreed to see what he could do about the problem.

However, as noted, I have credited Feldman's version of the termination conversation, particularly his testimony that he asked to be paid overtime, which Neuhaus denies was ever brought up, as well as Feldman's testimony that there had been a prior agreement between him and Neuhaus that Feldman would work 40 hours a week for a salary of \$550.

On June 4, O'Leary went into Respondent's store and told Scher that the Union was going to put up an unfair labor practice picket line in front of his store. Scher did not respond. O'Leary and Abondolo then went to the meat department and informed Alvarez that the picket line was ready and that an unfair labor practice strike was going to start. Alvarez then informed Rosenberg that Local 342-50 was calling an unfair labor practice strike and it was starting. Alvarez and Rosenberg left the meat department, and began walking to join the picket line. Neuhaus, who had been standing nearby, and apparently overheard the union representatives, approached Rosenberg and Alvarez, and told them that they were fired.

The next day, Rosenberg and Alvarez went inside the store to pick up their pay. Neuhaus told them to get out of the store, and that he didn't want to see either of them in the store again because they no longer belonged there. Rosenberg asked about getting his job back, adding that he needed the work. Neuhaus replied, "Let the Union give you work."

The above findings are based on a synthesis of portions of the testimony of Alvarez and Rosenberg. I reject and do not credit Neuhaus' testimony that he never fired either one of these employees, and they merely joined the picket line and, as far as he was concerned, simply never returned.

Although the record does contain some contradictions between the testimony of Alvarez and Rosenberg, as to precisely when they were fired, I am convinced that they were both testifying candidly and accurately that they were fired. I note that they both were consistent in their testimony that Neuhaus reconfirmed Respondent's discharge of both of them, when they went into the store the next day. I was not overwhelmingly impressed with Neuhaus' credibility in general, and as related above in most instances where his testimony conflicts with accounts of other witnesses, I have credited these other witnesses. I do so similarly in this instance, despite the differences between Alvarez and Rosenberg as to at what point Neuhaus discharged them.

Outside the store, from June 4 through mid-August, the Union set up and conducted a picket line. Rosenberg and Alvarez picketed regularly. Broymman and Feldman also picketed from time to time. None of the other employees in the meat department joined the picket line or went on strike. At the start of the strike, Union Official Mike Marino told Alvarez on the picket line that the picket line was because of illegal practices of Respondent. Alvarez, Rosenberg, and Broymman all had conversations among themselves about why they were striking. They stated that they were striking

because Respondent fired two people from the meat department, Alex and Igor (Kassam and Broytman), and because the employees wanted the Union in the meat department.

The decision to strike was made by the Union, according to O'Leary, after Respondent discharged Broytman, Kassam, and Feldman, and the Union felt that everyone was going to get fired so it had better put up a picket line.

The picket line signs read that Respondent "is unfair and does not employ Union kosher butchers and employees of Kosher Plaza on strike, Local 342-50."

Additionally, during the course of the picketing, which as noted lasted from June 4 through mid-August, the Union distributed various leaflets to employees, customers, and suppliers. These leaflets contained various assertions, including, *inter alia*, that Kosher Plaza illegally fired Russian Jewish butchers, refused to recognize the employees' legal right to join the union of their choice, the owners did not follow the labor laws, and finally in two leaflets the Union referred to the Region's issuance of a complaint against Respondent on August 3, and summarized the various allegations set forth there, including a bargaining order compelling Respondent to recognize the Union as the representative of its meat department employees.

The Union's picketing between June and August consisted generally of between 5 and 20 pickets. The pickets consisted of at various times Rosenberg, Broytman, Alvarez, and Feldman, but mainly representatives of the Union or union members employed at other stores represented by the Union. Different union representatives were present during the course of the picketing, including O'Leary, Joyce, Abondolo, and Mike Marino. For the most part, the picketing was peaceful with no significant instances of violence or interference with Respondent's business.

However, on Labor Day, September 7, the Union conducted a massive demonstration at Respondent's premises, which encompassed picketing by 4 busloads full of pickets, numbering approximately 200 people. These pickets were mainly union members employed at other employers, plus a number of union representatives and officers. The demonstration was carefully planned by the Union, which assigned four officials to be in charge of each busload of pickets. They were Abondolo, Peter Lureano, and Ralph Quatrocchi, area directors, and John Siv, safety director. These individuals gave instructions to the pickets on their buses as to how they were to conduct themselves. They were told to walk the picket line, keep moving, hand out leaflets, and not to get into any discussions or confrontations with customers or employees. The pickets were also told not to physically interfere with deliveries, but only to ask the driver to please honor the picket line. They were also instructed to allow cars to go in and out of the parking lot.

During the course of the picketing, the pickets would march up and down with picket signs, give out leaflets, and shout various statements, such as "pass-em by," "Kosher Place unfair," "don't shop here," "close them down," "we will rock you." Most of the pickets wore white windbreakers with the name of the Union written thereon.

During the course of the picketing, customers were permitted to go into and out of the store, although at times the customers had to step around the pickets in order to go into the facility.

The record reveals some evidence that nails were thrown by some of the pickets on the ground in Respondent's parking lot. There is no evidence that any union officials were present in or near the parking lot while the nails were dropped. Additionally, testimony was adduced that in the parking lot, a car driven by a Hasidic man had his car blocked by a group of pickets while attempting to pull into the parking lot. Some of the pickets began to bounce the car up and down, and one of the pickets pretended that he got hit by the car, and he fell to the ground. At that point, Joseph Tapia and Vincent Nava, two of Respondent's nonstriking employees, approached the pickets blocking the car from entering the lot. They asked the pickets to move out of the way and let the car enter the lot. The pickets responded no, that they weren't going to let anybody come in. Mike Merino responded to Nava,¹⁵ "No, why don't you make me move." Nava said, "fuck you," and Merino answered, "Make me move, mother fucker," and invited Nava to go down the block with him for a fight. Nava then began to laugh, at which point he was surrounded by a group of pickets, who began to bump him in his chest. Merino did not participate in the bumping, but he was present and made no effort to stop the pickets from bumping Nava.

Additionally, a group of 10 or 15 pickets also bumped chests with Respondent's partner Handler, and with employees Tapia and Christian Mojica. There is no credible evidence that Merino or any other union official was present at or observed these instances of pickets bumping chests with Handler, Mojica, or Tapia.

At another point during the day, a group of about 25 pickets, including Abondolo, entered the store, knocked down Scher and the security guard, and walked up and down the aisles throwing merchandise from the shelves onto the floor. After the pickets left, Respondent noticed that wires had been cut on the freezer, but no evidence was presented as to who if anyone had actually cut the wires. Evidence was also presented that Respondent's front window was broken, but no one could testify as to having seen the window broken, or who was responsible for the broken window.

A significant amount of testimony was adduced concerning an incident involving employees Mojica, Tapia, and Nava and a large group of pickets who were massed in front of the front door of Respondent's store. Mojica attempted to move through the crowd of pickets in order to enter the store. As he neared the door, he was dragged by his hair by one of the pickets away from the entrance and was punched in the head and the face. Mojica punched the individual who had dragged him by the hair, which resulted in his being thrown to the ground when he was kicked in the ribs, back, and legs and bitten on the hand by various of the pickets. Employees Nava and Tapia, who observed the fracas, ran to into the crowd to assist their fellow worker, and began to punch Mojica's assailants. Nava and Tapia were in turn thrown to the ground and punched and kicked by a number of the union pickets. The incident finally ended when Ruben, another of Respondent's employees, sprayed mace to disburse the employees.

Mojica, Nava, and Tapia all were taken to the emergency room for treatment by ambulance. Tapia subsequently spent 3 days in the hospital for a badly bruised spleen that he suf-

¹⁵ Nava had known Merino from the Union's prior picketing.

ferred from the attack. Nava was treated at the emergency room for a badly bruised wrist. Mojica was given a tetanus shot for the bite that he received, but apparently suffered no other injuries, insofar as this record discloses. There is some evidence although not conclusive that both Merino and Abondolo¹⁶ were either directly involved in or stood by and watched the above-described incident.

III. ANALYSIS

A. The Alleged 8(a)(1) and (2) Violations

I have found above that on May 27, Respondent permitted representatives of Local 5 to meet with its meat department employees on company times and premises to solicit membership and the signing of authorization cards for that labor organization. In that connection, I have found that Respondent's admitted agent, Mark Neuhaus, entered the meat department with the representatives from Local 5, remained in the room while they solicited Respondent's employees to sign cards, and a half hour after the meeting concluded returned to the meat department and ordered, solicited, and in fact assisted employees Alvarez and Rosenberg in filling out cards for Local 5. This conduct of Neuhaus constitutes clear actions of unlawful assistance to Local 5 in violation of Section 8(a)(1) and (2) of the Act. *Brown Transport Corp.*, 296 NLRB 552 (1989); *Ella Industries*, 295 NLRB 976 (1989); *Famous Castings Corp.*, 301 NLRB 404, 407 (1991); and *Ford Bros.*, 263 NLRB 92, 101 (1982).

When Neuhaus returned to the meat department on that day, he also asked who had not signed cards for Local 5, and added that all those who had not signed the cards would be fired. These remarks constitute an unlawful interrogation, *Rossmore House*, 269 NLRB 1156 (1984), and an unlawful threat, *Ford Bros.*, supra. *Southland Knitwear*, 260 NLRB 642, 655 (1982), in violation of Section 8(a)(1) of the Act, as well as unlawful assistance to Local 5 in violation of Section 8(a)(2) of the Act. *Southland*, supra; *Ford Bros.*, supra.

Furthermore, I also conclude that Respondent is responsible for the similarly unlawful conduct of Mike Zielinski in connection with the meeting. In that regard, I have found that Zielinski interrupted the meat department employees from their work, instructed them to pay attention, and then announced that representatives from Local 5 would be coming into the department to talk to employees about joining that Union. Zielinski added that the bosses wanted everyone to sign cards for Local 5 and, after employees protested, threatened that employees would be discharged if they did not sign cards for Local 5. Zielinski also collected some cards that employees signed at the meeting.

Zielinski was, as I have concluded, designated by Respondent to employees as a manager, employees were instructed to and did take orders from him, and he also assigned work and work hours to employees and ordered meat. Although I do not find that he exercised sufficient independent judgment in these functions to warrant the conclusion that he is a supervisor under Section 2(11) of the Act, these quasi-supervisory responsibilities are also relevant in assessing his status as an agent for Respondent. *Quality Drywall Corp.*, 254 NLRB 617, 620 (1981).

¹⁶I note significantly that neither Merino nor Abondolo testified in this proceeding.

Thus, even absent supervisory status, an employer can be responsible for the conduct of an employee, as an agent, where under all the circumstances the employees would reasonably believe that the employee was reflecting company policy and acting on behalf of management. *EDP Medical Computer Systems*, 284 NLRB 1231, 1265 (1987); *United Cloth Co.*, 278 NLRB 583, 586 (1986); *Wm. Chalson & Co.*, 252 NLRB 25, 33-34 (1980); *Community Cash*, 238 NLRB 265 (1978); and *Ella Industries*, supra.

Here, I have found that when Zielinski interrupted employees from their work and announced that Local 5 representatives would be meeting with employees, he informed the workers that the bosses wanted everyone to sign cards for Local 5. *EDP*, supra; *Wm. Chalson*, supra. More importantly, when the Local 5 representatives subsequently appeared, they were accompanied by Neuhaus, who remained in the meat room during the time that Local 5 representatives solicited authorization cards from employees, which were collected by Zielinski. *United Cloth*, supra; *Ella Industries*, supra. Moreover, a half hour after the meeting, Neuhaus ordered and physically assisted Rosenberg and Alvarez with the signing of their cards for Local 5, and threatened employees with discharge if they didn't sign Local 5 cards. *Community Cash*, supra; *EDP*, supra. Accordingly, based on the foregoing, I conclude that Respondent has placed Zielinski in a position identifying him with management, so that employees could reasonably believe that he spoke for management particularly with respect to the signing of cards for Local 5. *Ella Industries*, supra; *EDP*, supra; and *Community Cash*, supra. Therefore, Respondent is responsible for Zielinski's conduct.

In that regard, Zielinski called the meeting of employees on worktime, to speak with Local 5 representatives, told them that the bosses wanted them to sign cards for Local 5, and threatened them with discharge if they refused to sign Local 5 cards. This conduct is clearly violative of Section 8(a)(1) and (2) of the Act, *Ella Industries*, supra; *Famous Castings*, supra; *Ford Bros.*, supra; *Southland Knitwear*, supra, and I find that Respondent has violated these sections of the Act by Zielinski's actions.

Moreover, when on May 28, Local 342-50 representatives requested similar access to Respondent's facility that had been granted to Local 5 the day before, Scher on behalf of Respondent denied the request. Respondent has violated Section 8(a)(1) and (2) of the Act by denying to Local 342-50 equal access to speak to its employees. *Ella Industries*, supra at 980; *Castaways Management*, 285 NLRB 954, 970 (1987); *Monfort of Colorado, Inc.*, 256 NLRB 613, 618 (1981); and *River Manor H.R.F.*, 224 NLRB 227, 236 (1976).

Additional unlawful interrogations and threats have been committed by Neuhaus in the following incidents. On May 31, after Rosenberg had attempted to give Neuhaus an envelope containing material from Local 342-50, Neuhaus asked Rosenberg if he wanted to work in the Union? After Rosenberg replied, "Yes," Neuhaus responded that he should go to another city or State if he was looking for a union job. The latter remark of Neuhaus is clearly unlawful, as it conveys to employees the message that support for the Union and continued employment with Respondent are not compatible. *Kenrich Petrochemicals*, 294 NLRB 519, 531 (1989); *Bill Scott Oldsmobile*, 282 NLRB 1073 (1987); and *L. A. Baker Electric*, 265 NLRB 1579, 1580 (1982).

This unlawful threat by Respondent also serves to make coercive the accompanying interrogation of Rosenberg as to whether he wanted to work in a union shop. *Cannon Industries*, 291 NLRB 632, 636-637 (1988). Accordingly, I conclude that Respondent has further violated Section 8(a)(1) of the Act by Neuhaus' conduct of unlawful interrogations and threats to discharge by these remarks to Rosenberg on May 31.

Similarly, also on May 31, Neuhaus summoned Broytman into his office, and asked him if he had signed any papers for any other union. After Broytman replied, "yes," Neuhaus fired him. The questioning of Broytman in Neuhaus' office in these circumstances was clearly coercive and violative of Section 8(a)(1) of the Act. I so find.

The complaint also alleges several instances of unlawful surveillance by Respondent. The first such instance took place on May 24, when Handler followed employee Rosenberg in Joyce's car for well over an hour, despite attempts by Joyce to double back and to stop at a bar. During the following, as well as while both cars were stopped near the bar, Handler was observed by Rosenberg talking into a walkie-talkie. Inasmuch as Respondent admittedly suspected who Joyce was, by virtue of his prior presence in his car, talking to employees in front of Respondent's premises, there can be little doubt that the purpose of Respondent in following the car was to surveil the union activities of Rosenberg and Joyce.

Respondent argues that because Joyce behaved in a suspicious manner, by parking in front of the premises, sometimes at odd hours, without identifying himself to Respondent, that it was justified in believing that he may be engaged in some unlawful activity. However, Respondent's argument has not been substantiated, particularly because Handler did not testify, and gave no testimony as to why he followed Joyce. Moreover, because as noted Neuhaus conceded that he believed that Joyce was a union organizer, I find that Respondent's following of the car containing Joyce and Rosenberg on May 24 constituted unlawful surveillance and is violative of Section 8(a)(1) of the Act. *Nueva Engineering*, 269 NLRB 999, 1004 (1984).

Several days later, on May 29, while the employees were meeting on the street with union officials during lunch hour, Scher drove by the employees with his son in the car speaking into a walkie-talkie. Scher's testimony that he merely drove by because his son reported something "suspicious" going on, and he thought there may be a fight, is unconvincing. Particularly, because I have found that Scher drove by the employees twice, and that Respondent suspected that Joyce was a union official, I conclude that the purpose of Respondent's driving by was to surveil its employees' union activities, in violation of Section 8(a)(1) of the Act. *Lakepark Industries*, 293 NLRB 452 (1989); *Mid Mountain Foods*, 291 NLRB 693, 699 (1988). See also *Action Auto Sales*, 298 NLRB 875, 887 (1990).

Inasmuch as I have found these two instances of unlawful surveillance, I find it unnecessary to decide whether the third alleged instance of surveillance, concerning the actions of the security guard is unlawful. In view of the questionable nature of this allegation, which consisted of the following of a car for less than a block, *Heads & Threads*, 261 NLRB 800, 808 (1982), plus the fact that a finding of such a violation would be cumulative, and not change the remedy, I conclude that

it is not essential to decide whether this conduct was violative of the Act.

B. The Alleged Discriminatory Discharges

1. Igor Broytman

Broytman signed an authorization card for Local 5, on May 27, in the context of the unlawful assistance of Respondent as described above. However, the next day, May 28, he signed a card for Local 342-50 in Joyce's car.

On the same day that Broytman signed his Local 342-50 card, Local 342-50 officials made a demand of Respondent to represent its meat department employees, as well as asking for the same access to employees as had been granted to Local 5 representatives.

Then on May 29, Respondent by Scher unlawfully surveilled its employees at a meeting at lunchtime with representatives of Local 342-50, during which Broytman was present. As a result of Broytman's being seen by Respondent at that meeting, it is clear that Respondent believed or suspected (correctly as it turned out) that he was a supporter of Local 342-50. Respondent confirmed this fact by unlawfully interrogating Broytman on May 31, the next working day after the meeting, when Broytman admitted that he had signed a card for another "union" (clearly referring to Local 342-50, as opposed to Local 5, whose card Broytman had signed at Respondent's insistence). Immediately after ascertaining this information, Respondent terminated Broytman.

Based on the foregoing, coupled with the other unfair labor practices discussed above, a strong prima facie case has been established that a motivating factor in Broytman's discharge was his activities on behalf of Local 342-50. *Wright Line*, 251 NLRB 1053 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981). The burden then shifts to Respondent to establish by a preponderance of the evidence, that it would have taken the same action against Broytman, absent his union activities. *Wright Line*, *supra*; *NLRB v. Transportation Management Co.*, 462 U.S. 393 (1983).

Respondent has fallen far short of meeting its burden in this regard. Respondent asserts that it discharged Broytman because of his failure to sign I-9 and W-4 forms. Neuhaus testified that he had been given a list by his clerical employee of employees who had not signed these forms, and that he had spoken to Broytman as well as other employees about it on several prior occasions, before finally on May 31 telling Broytman that unless he signed the forms, "I cannot keep you at the store."

However, Neuhaus gave no explanation as to how he suddenly decided to insist that Broytman sign the forms on that date, on penalty of discharge, and most importantly why he did not act similarly with respect to other employees who also did not sign these forms. In that regard, the evidence discloses that several other employees who were employed by Respondent at the time had also not signed these forms, and they were permitted to continue to work for Respondent for several more months, and were not discharged. Broytman, on the other hand, who had been employed by Respondent for less than a month,¹⁷ was fired on May 31,

¹⁷ Broytman began his employment for Respondent on May 10, some 3 weeks before his discharge.

on the same day and at the same time that Respondent confirmed its prior suspicions that he had signed a card for Local 342-50. In these circumstances, Respondent has failed to meet its burden of establishing that it would have terminated Broytman absent his union activities. *Wright Line*, supra.

Respondent also relies on the fact that Neuhaus disputed Broytman's testimony that Kassam was fired, and that Kassam was neither called as a witness nor alleged as a discriminatee. Although I have found that Kassam informed Broytman that Respondent had terminated him, absent Kassam's testimony, I make no finding as to whether Kassam was discharged, discriminatorily or otherwise. However, this has little bearing on the question of Broytman's discharge, which as I have outlined above has been proven to be discriminatorily motivated by compelling evidence of knowledge of Broytman's union activities, timing of the discharge, plus substantial evidence of animus toward activities of its employees, on behalf of Local 342-50.

Accordingly, based on the foregoing, I conclude that Respondent has violated Section 8(a)(1) and (3) of the Act by its discharge of Broytman.

2. Ronald Feldman

Respondent contends initially that Feldman was a supervisor under Section 2(11) of the Act, thereby disqualifying him from consideration as a discriminatee. However, I am not persuaded that Respondent has established such status. Although Feldman was hired as a meat manager at a salary of \$550, as opposed to the hourly salary of other meat department employees, this factor in and of itself is not sufficient to confer supervisory status on Feldman.

It is noteworthy that after Zielinski was hired, Feldman's responsibilities were significantly diminished, as Respondent gave the responsibility of ordering meat to Zielinski, and told employees that Zielinski was their manager and to take orders from Zielinski. Although even after these events, Feldman continued to along with Zielinski assign work to employees, the record doesn't establish that either of them needed to exercise independent judgment when making these assignments to the other workers. *Clark Machine Corp.*, 308 NLRB 555 (1992). The evidence discloses that the butchers and wrappers basically knew what to do, and how to perform their work, which was fairly routine, and it did not require constant supervision by Feldman or Zielinski for that matter.

Although the record did disclose that Feldman did become involved in the hiring process of Alvarez, wherein his recommendation to hire Alvarez was approved by Respondent, I note that it was Neuhaus who made the final decision. One single isolated instance of an effective recommendation to hire is not sufficient in my view to establish that Feldman was a supervisor under Section 2(11) of the Act. Moreover, the record is not clear whether Feldman's involvement in the hiring of Alvarez occurred before or after Zielinski was appointed as manager by Respondent, wherein Feldman's responsibilities were substantially diminished, although he was not specifically informed that he was removed as manager.

Accordingly, because it is Respondent's burden to establish supervisory status of Feldman at the time of his discharge, I conclude that it has failed to meet the burden, and that he was an employee at the time of his termination on June 1.

Turning to the merits of the complaint allegations, a significant dispute exists as to whether Feldman was discharged or quit his job. However, because the conflict involves whether Feldman was fired because he refused to work additional hours assigned by Respondent, or whether he quit rather than work the extra hours, this dispute is illusory and inconsequential, because in either event, the significant issue is the legality of Respondent's decision to insist on Feldman's working the additional hours. Thus, if the change in hours were unlawful, in these circumstances a constructive discharge finding would be warranted, because such a change would be sufficient to warrant the employee's decision to quit. See *Kenrich Petrochemical*, 294 NLRB 519, 539, (1989), and cases cited there.

In assessing Respondent's actions, once again the *Wright Line* criteria must be evaluated. Here, Feldman, although present at the meeting with Local 5 representatives on May 27, refused to sign a card for Local 5, although as noted Respondent through both Zielinski and Neuhaus had urged their employees to do so, and unlawfully threatened them with discharge if they did not sign such cards.

Moreover, Feldman instead had signed a card for Local 342-50 on May 8, and more importantly was present at the meeting of employees and Local 342-50 representatives on the street, on May 29, that was observed by Scher. Immediately after that meeting, Neuhaus asked to speak to Feldman about his hours, which Feldman successfully postponed until his next working day, Monday, June 1. It is significant to note that I have found above that Broytman, who was also present at that meeting, was discriminatorily discharged on May 31, the day before Feldman's termination occurred.

In these circumstances, I conclude that a prima facie case has been established that the decision of Respondent to change Feldman's hours on June 1, or to discharge him for refusing to accept such a change, was motivated by protested conduct, i.e., his refusal to sign a card for Local 5, Respondent's favored Union, and his decision to sign a card for and support Local 342-50. Although as Respondent points out, no antiunion statements concerning Local 342-50 were specifically directed toward Feldman, the significant animus described above toward Local 342-50 supporters, including threats of discharge, surveillance, and interrogation, plus the unlawful discharge of Broytman and the assistance to Local 5, more than compensates for the failure to make any direct antiunion remark to Feldman. Knowledge of Feldman's protected conduct is demonstrated by his failure to sign a Local 5 card, and statement to Zielinski in Neuhaus' presence that he was not interested, plus his presence at the union meeting that Respondent surveilled. The timing is also quite suspicious, coming the next working day after the meeting.¹⁸

The burden then shifts to Respondent to demonstrate by a preponderance of the evidence that it would have taken the same action against Feldman, absent his protected conduct. Once more, Respondent has fallen far short of meeting such burden.

In that connection, Neuhaus testified credibly that he had spoken to Feldman previously about the problems that his leaving at 5 p.m. was causing the department, particularly on

¹⁸ Indeed, Neuhaus attempted to make the change in hours on the day of the meeting, but Feldman persuaded him to postpone the discussion until the next workday.

Wednesday and Thursday evenings, Respondent's busiest nights. I have also credited Neuhaus that Feldman replied that he would see what he could do about staying later. However, Neuhaus' further testimony that on June 1 it finally "reached a point where I couldn't" work with Feldman anymore has not been substantiated, and I find to be pretextual.

Respondent based on Neuhaus' own testimony had tolerated Feldman's going home at 5 p.m., and the consequent problems in its meat department from the first week of his employment back in March. It took no action against Feldman, either before or after its busiest time of the year, the Passover holidays which occurred in April. Yet, on June 1 shortly after the appearance of Local 342-50, Feldman's support for that Union and his failure to support Local 5, the Union favored by Respondent, Respondent suddenly decided to insist that Feldman work additional hours. It is noteworthy that Neuhaus wanted Feldman to stay as many as 3-5 extra hours on busy nights (at least twice a week according to Neuhaus) and refused Feldman's request for overtime or additional pay for these hours.

Because Respondent has adduced no evidence as to why on June 1, it felt it necessary to insist on the extra hours, when it had not so insisted on prior occasions which included the Passover holidays, the only logical conclusion that can be drawn is that Feldman's protected activities accounted for this decision not to tolerate these problems any longer. *Resolute Realty Co.*, 297 NLRB 629, 688 (1990).

In these circumstances, Respondent has failed to establish that it would have changed Feldman's hours (causing him to quit) and/or discharged him for refusing to agree to such changes, absent his protected conduct. Therefore, Respondent has violated Section 8(a)(1) and (3) of the Act. I so find.

3. Alex Rosenberg and Sergio Alvarez

Once more a strong prima facie case of discriminatory conduct has been established in connection with the discharges of Alvarez and Rosenberg. They were both card signers for Local 342-50, attended the meeting observed by Respondent, and were both subject to unlawful threats. More importantly, however, they were terminated by Respondent as they were leaving the store to go to join the Union's picket line. Therefore, I conclude that a motivating factor in their discharge was their conduct and activities on behalf of and in support of Local 342-50, including their participation in a Local 342-50-conducted strike.

Because Respondent has contended, contrary to my factual findings above, that these employees were not fired, they presented no reasons as to why it discharged them, and consequently have not shown that it would have terminated Alvarez or Rosenberg, absent their protected conduct. Therefore, I conclude that Respondent has violated Section 8(a)(1) and (3) of the Act by its discharge of these employees.¹⁹

¹⁹ Respondent has argued, as a general defense to all of its alleged discriminatory discharges, that it took no action against card signers Fardman and Izhak, and that the discharge of card signer Kassam has not been shown to be unlawful. However, a discriminatory motive, otherwise established, is not disproved by an employer's proof that it did not take similar action against all union adherents. *Resolute Realty*, supra at 689; *Fredonia Valley Quarries*, 272 NLRB 843, 847 (1989).

The complaint, as amended, also alleges that the strike engaged in by these employees was an unfair labor practice strike. Here, although the evidence does disclose that the strike also had a recognitional objective, i.e., to persuade Respondent to recognize the Union, it also had as an objective, the protest of Respondent's unfair labor practices. This is demonstrated by the testimony of Alvarez, Rosenberg, and O'Leary that the strike was an unfair labor practice strike in protest of the discharge of Broymman and Feldman, the meeting with employees in late May, when O'Leary explained one of the Union's options may be an unfair labor practice strike, plus the handbills distributed during the course of the strike, which clearly set forth such an objective of the picketing and the strike.

Inasmuch as a strike is considered to be an unfair labor practice strike, as long as one of the objectives is to protest unfair labor practices of the employees, even though the strike may also have another objective as well, *Workroom for Designers*, 274 NLRB 840, 856 (1985); *Mastro Plastics v. NLRB*, 350 U.S. 270 (1956), I conclude that the strike on June 4 and thereafter was an unfair labor practice strike, and that Alvarez and Rosenberg, even if they were not found to be discriminatees here, are entitled to the status of unfair labor practice strikers.

C. The Alleged Refusal to Bargain

The complaint alleges and the General Counsel contends that Respondent refused to recognize and bargain with the Union, the designed majority representative of its employees in an appropriate unit consisting of all full- and part-time meat department employees.

Respondent vigorously contests the General Counsel's assertions that the Union represented a majority of employees in the meat department, and that a unit confined to meat department employees is an appropriate unit under the Act.

In order to resolve both of these issues, it is first necessary to decide which employees should be included in a unit of meat department employees. In that regard, all parties agree that such a unit should consist of at least six employees. These are Alvarez, Rosenberg, Broymman, Kassam, Izhak, and Fardman. The General Counsel contends that Zielinski should not be included because of his "identification with management," and Respondent contends that Feldman should be excluded because he is a supervisor under Section 2(11) of the Act.

As noted above, I have found that neither Zielinski nor Feldman was a statutory supervisor, and that although they were both "managers" of the department, their work assignment responsibilities were routine and did not require the exercise of independent judgment. I find that they were both as experienced butchers, leadmen, but not 2(11) supervisors, and should be included in the unit.

I have found above that Zielinski was an agent of Respondent in connection with the solicitation of cards for Local 5, and statements made by him in that regard. However, this finding doesn't make him ineligible to be included in the unit, and the General Counsel has cited no authority in support of such a proposition, nor any case where such a finding renders an individual "identified with management," and consequently not properly included in the unit.

Respondent also employed Schlomo Taub, as its "Mashgiach" who spent most of his time in the meat depart-

ment. The General Counsel, although not including Taub as a unit employee in his calculations, has set forth no reason or rationale for not considering him to be a unit employee. Taub spends a majority of his time in the meat department, performing various functions in the department similar to that of other meat department employees, such as ordering meat, taking and/or filling special orders, filling the showcase, and wrapping meat, as well as his Mashgiach responsibilities, which also relate to the meat department's functioning. In these circumstances, I conclude that Taub should be included as a meat department employee of Respondent.

Respondent also contends that a number of other employees, who performed some work in the meat department during the month of May, should also be included in the unit as regular part-time employees. These employees include Danny, Anna, Kleinman, Sheinhouse (the cookie man), Tirado, and Henry. In addition, Respondent also appears to contend that the unnamed part-time porter, who also performed some work in the meat department, should also be includable as a unit employee. However, in my view, Respondent has not established that any of these employees should be considered regular part-time employees in the meat department at the time of the demand for recognition, May 28, which is the appropriate date to measure majority status. These employees worked elsewhere in Respondent's store, and were called on to work in the meat department only when the department became very busy on Wednesday and/or Thursday nights. They had no regular schedule of hours, and Respondent has not established any specific amounts of hours worked for any of these employees, prior to the demand for recognition.

Although after the discharge of Broymtan and Kassam on May 31, Danny worked on a more regular basis filling in as a wrapper, and Anna was transferred into the department as a full-time meat department employee for a short period of time, these events are irrelevant to a determination of their status as of May 28, the date of the demand.

Accordingly, I conclude that prior to May 28, these employees worked in the meat department on a sporadic and irregular basis, and cannot be considered regular part-time employees in that department at that time. *Delta Gas Co.*, 283 NLRB 391, 397 (1987); *Mariposa Press*, 273 NLRB 528, 530 fn. 12 (1984); *Haag Drug Co.*, 146 NLRB 798, 800 (1964).

I therefore conclude that the unit of meat department employees as of May 28 consisted of nine employees, Alvarez, Rosenberg, Feldman, Zielinski, Izhak, Fardman, Broymtan, Kassam, and Taub.

The Union obtained seven signed authorization cards from Respondent's employees, which constitutes a clear majority of Respondent's employees in a unit of meat department employees which I have found consisted of nine employees. Respondent asserts that the cards were invalid as a proper designation of representation, because they only designate the International as the representative without any mention of Local 342-50. I do not agree.

Although the heading of the card refers only to the International, underneath the authorization for representation statement, the card authorizes the International or its chartered local unions (emphasis added) to represent the employee. Such a card is a clear designation of the International or its local unions to represent the employees, and has been

so held. *Atlas Boot Mfg. Co.*, 116 NLRB 565, 569 (1956). Moreover, even absent the additional language referring to the Local, a designation of parent organization is a valid designation of its affiliate local. *Norfolk Southern Bus Corp.*, 76 NLRB 488, 489 (1948); *Nubone Co.*, 62 NLRB 322, 326 (1945).

Moreover, I have also found that when Joyce solicited the cards from the employees, he gave them his business card, which identified himself as a representative of Local 342-50.

Therefore, I find that the cards were valid designations of Local 342-50 to represent the employees, and that it did represent a majority of employees in a unit of meat department employees. Whether such a unit is an appropriate unit for collective bargaining is a more problematic issue, to which I now turn.

Although the Board has often found that meat department employees of a grocery store have a distinguishable community of interest, warranting a funding of an appropriate unit, *Great Scot of Florida*, 256 NLRB 885 fn. 1 (1981); *Buehler's Food Markets*, 232 NLRB 785 (1977); *R-N Market*, 190 NLRB 292 (1971); *Allied Discount Foods*, 167 NLRB 361 (1967), and have in fact adopted a presumption that a unit of meat department employees is appropriate, *Big Y Supermarkets*, 161 NLRB 1263 (1966), this presumption is not applicable where the employees do not exercise traditional meatcutting skills. *Copps Food Center*, 301 NLRB 398, 399 (1991); *Hall's Super Duper*, 281 NLRB 1116, 1117-1118 (1986).

Thus, the crucial determination to be made here is whether the meat department employees, employed by Respondent, exercise or utilize "traditional meatcutting skills," as defined by Board precedent. My examination of such precedent reveals that, where as here, the employees do not handle carcass meat, but handle only prepackaged and boxed meats that merely have to be cut into smaller pieces, and trimmed before being weighed and wrapped, such traditional meatcutting skills were not exercised. *Copps*, supra; *Hall's*, supra; and *Ashcraft's Market*, 246 NLRB 471 (1979). Thus, although the cutting of boxed and precut beef into pieces required for sale to consumers does require some specialized skill and equipment,²⁰ it does not require the sophisticated butcher skills traditionally used by meatcutters. *Savemart of Modesto*, 293 NLRB 1190, 1191 (1989). The traditional skilled work is instead performed by the meat distributor at its packing house. *Yoahan of California*, 252 NLRB 309, 310 (1980).

Here, as in the above-cited cases, Respondent's employees work only on boxed or prepackaged meat, and their responsibilities primarily entail the relatively simple task of cutting the already precut meat into smaller pieces, and trimming the fat off the meat. In connection with the latter task, employee Alvarez candidly conceded that a beginner can learn to trim fat in less than a minute. Respondent's employees also perform the grinding of meat into chopped meat, which under no stretch of the imagination can be considered a traditional meatcutting skill, particularly because inexperienced non-butchers have from time to time performed this work.

Although another task performed by Respondent's meat department employees is the pickling of corned beef, the evidence here does not establish the training or experience re-

²⁰ I note that some of the butchers employed by Respondent do utilize a bandsaw to perform some of the cutting.

quired to perform this work, and I conclude that the General Counsel has not demonstrated that pickling of corned beef is a traditional meatcutting skill.

A small percentage of the work performed by Respondent's meat department employees is "special order" work which the Board has held might be construed as involving the exercise of traditional meatcutting skills. *R-N Market*, supra; *Copps*, supra; and *Hall's*, supra. However, the minimal amount of such work performed by Respondent's employees is not sufficient to warrant a finding that the unit employees as a whole perform traditional meatcutting skills. *Copps*, supra; *Hall's*, supra.

It is also noteworthy in this regard that a substantial portion of the meat department employees' duties consists of unloading and loading trucks and unpacking cases of meat and chicken products; stocking display cases with prepackaged and prepriced meat, chicken, and cold cuts; traying; weighing; pricing; wrapping; and pricing meat and chicken, which are clearly not traditional meatcutting skills. *Great Scot*, supra; *Ashcraft's*, supra; and *Copps*, supra.

Accordingly, based on the foregoing cases and analysis, I conclude that the employees in Respondent's meat department do not perform "traditional meatcutting skills" under Board standards, and that no presumption exists that a unit confined to such employees is appropriate.

It then becomes necessary to examine other traditional factors used by the Board in making unit determinations in these cases, which in my view do not support a finding that such a unit is appropriate. One significant factor is that all employees of the Respondent including the meat department employees, with the exception of Meat Manager Feldman, receive the same wage range of \$4.25 to \$7 per hour. *Copps*, supra; *Hall's*, supra; and *Ashcraft's*, supra. It is notable that the Board in the above cases distinguished prior cases such as *R-N Market*, supra; *Priced-Less Discount*, 157 NLRB 1143 (1966); and *Great Scot*, supra, where the Board had relied on the fact that meat department employees had received significantly higher wages than other store employees in finding such a unit appropriate.

Similarly, all of Respondent's employees including meat department employees are subject to a uniform policy with respect to fringe benefits, share the same breakroom facilities, and have frequent contacts with each other including eating their meals together. *Copp's*, supra; *Ashcraft's*, supra; *Hall's*, supra; and *Great Scot*, supra. In that connection, it is significant that one of the jobs performed by meat department employees is the pickling of corned beef, which is done outside the confines of the meat room in a corridor. There, the work was performed near a refrigerator which at times required the meat department employee to get out of the way and temporarily stop work, when employees from other departments would need to get in and out of the refrigerator. Respondent also used a walk-in refrigerator which contained both chickens and vegetables. This required constant contact and cooperation between meat department employees and produce department employees in coordinating the use of that refrigerator.

Another factor which the Board has relied on in making unit determinations in meat department cases is the presence or absence of an apprenticeship program. *Ashcraft's*, supra. See also *Hall's*, supra, where the Board distinguished *Big Y*, supra, where an appropriate unit was found, in part based on

the presence of an apprenticeship program. Here, Respondent has no apprenticeship program, which is consistent with its practice of not paying significantly higher wages to its butchers, and my previous finding that they not exercise traditional meatcutting skills.

The Board also considers the question of common and/or separate supervision of meat department employees. Here, although Respondent employed Feldman and/or Zielinski as meat department managers, I have found their responsibilities in this regard primarily routine, *Ashcraft's*, supra, and that they are not supervisors under the Act. *Great Scot*, supra. Moreover, Respondent's principals, primarily Neuhaus in the case of meat department employees, regularly appear in the department, and make all major decisions regarding meat department employees such as hiring, firing, granting of wage increases, and disciplining of employees. In these circumstances, I do not agree with the General Counsel's contention that significant separate supervision of the meat department employees has been established, *Great Scot*, supra; *Ashcraft's*, supra, and conclude that they share common supervision with other employees in the unit.

Moreover, I would note that in *Copps*, supra, the most recent Board case dealing with the issue of the appropriateness of meat department units, it was found that such a unit was not appropriate, even though the meat department managers hired, fired, and disciplined employees within their departments.

Finally, the Board also frequently relies on the issue of interchange between the employees of the meat department and the other employees in the store. I have found above with respect to this issue that prior and after the discharge of Respondent's two wrappers, it would assign as many as six employees from other parts of the store (not necessarily at the same time) to help out in the meat department in various tasks such as wrapping meat and chicken, packing chickens, grinding meats, putting prices on items, and stocking the showcase with meat and chicken. This would occur primarily when Respondent was busy, which was most commonly Thursday nights, sometimes on Wednesdays, and prior to Jewish holidays such as Passover. Additionally on a daily basis, employees from other departments would assist meat department employees in unloading deliveries.²¹

Moreover, I have also found that some meat department employees would from time to time help out in other parts of the store by helping other employees unload deliveries, and assisting these employees in pushing U-boats filled with products within the store. Additionally, Respondent has utilized meat department employee Izhak to drive Respondent's van to pick up or deliver orders or supplies, and Fardman to help bag groceries. In this connection, Fardman had started out as a bagger while working for Respondent, before being transferred into the meat department.

Also, unit employee Schlomo Taub regularly spends a substantial amount of his time outside of the meat room, performing work in various other parts of the store, unrelated to his meat department functions.

²¹ Respondent also employed a porter who worked part time in the meat department performing maintenance tasks and "bolting up chickens." The record does not disclose how much time he spent in the meat department, or how much time working in the rest of the store.

After the discharge of the wrappers, Respondent transferred Anna, a cashier, who had previously filled in as a wrapper when the store was busy, to work full time in the meat department. Additionally, employee Danny, who had also previously helped out in the department during busy times, was assigned significantly more hours of work as a wrapper, from 2–7 hours a day, up to three times a week, until a new full-time wrapper was hired.

I do deem it appropriate to consider these latter two events, as evidence of Respondent's policy of interchange of employees, notwithstanding the fact that they occurred subsequent to the demand for recognition. Although, I have not considered these actions in assessing the status of these individuals as unit employees, because the appropriate time for such evaluation is clearly the date of the demand, such is not necessarily the case in evaluating unit issues. In my view, the question of Respondent's practices concerning the interchange of employees can take into account postdemand events, because they bear on Respondent's overall policies, and are consistent with the credited²² testimony of Scher and Neuhaus that Respondent's store is run on a basis of employees constantly helping each other out.

Accordingly, based on the above, I find that the evidence reveals substantial interchange between employees in and out of Respondent's meat department, particularly in view of the fact that Respondent had been in operation for merely 3 months, making these instances of permanent or temporary interchange more significant. Thus, this factor also militates heavily against a finding that a separate unit of meat department employees is appropriate. *Ashcraft's*, supra; *Great Scot*, supra.

Moreover, it is also noted that, even if it should be found that the evidence of interchange was insubstantial, that factor would not be dispositive, because *Hall's*, supra; *Copps*, supra; and *Yaohan*, supra, all found meat department units to be inappropriate despite the absence of substantial interchange, asserting that the most significant factor in such a decision is the question of the need for traditional meatcutting skills.

The General Counsel places principal reliance on *NLRB v. Joe B. Foods*, 953 F.2d 287, 293 (7th Cir. 1992), which found a unit limited to meat department employees appropriate, despite the fact that 70–80 percent of the work of the butchers was performed on boxed or prepackaged meat. However, I find this case to be clearly distinguishable for a number of reasons. The General Counsel conveniently neglects to mention the essence of the Board and court decisions in finding that traditional meatcutting skills were exercised by the butchers in that case. Both decisions emphasized that "the addition of 'rails' to the meat department requires the employees to process full fore and hind quarters of meat." 296 NLRB at 950 and 953 F.2d at 293. Here, Respondent does not have "rails" in the department, and the employees do not process full fore and hind quarters of meat.

Moreover, the employees in *Joe B. Foods*, supra, worked exclusively in the meat department which was separately su-

pervised, and there was no evidence of interchange between meat department employees and other store employees. These factors were also relied on by both the court and the Board in finding the existence of a community of interest for the meat department employees. As I have noted above, there is substantial evidence of interchange between meat department and other store employees, and the separate supervision of the department by the managers is primarily routine, although all store employees are commonly supervised by Respondent's partners.

Finally, the Board and the court there emphasized that a separate meat department was the historically recognized unit, which is in accord with longstanding Board policy to give "substantial weight to prior bargaining history." 953 F.2d at 293. Here, there is no bargaining history present, as was the case in *Joe B. Foods*, supra.

Therefore, I find that the General Counsel's reliance on *Joe B. Foods* is misplaced, and that the more dispositive precedent are the cases that I have detailed above such as *Copps*, supra; *Hall's*, supra; and *Ashcraft's*, supra.

The General Counsel also makes reference to industry practice in the New York geographical area, and argues that the record supports the conclusion that the Union represents separate units of meat department employees in both kosher and nonkosher supermarkets in such an area. However, the evidence presented in support of such an assertion is of dubious validity, inasmuch as Joyce's testimony to this effect is directly contradicted by the collective-bargaining agreements themselves, which on their face indicate that the units also include other nonmeat department employees, such as cashiers, drivers, delivery clerks, utility employees, and deli and appetizer clerks.

Joyce sought to explain this discrepancy by asserting that notwithstanding the terms of the agreement, in kosher shops, other employees such as cashiers, clerks, and drivers are represented by the Union only in butcher shops as opposed to supermarkets. Joyce further explained that a butcher shop primarily sells meat, but will also have an aisle or two of grocery products as well. Even accepting Joyce's testimony which appears to run afoul of the parol evidence rule, it demonstrates that the Union has represented other categories of employees such as cashiers, drivers, and clerks, which seems to me to detract from its argument that the meat department employees by virtue of their specialized skills have a separate community of interest warranting separate representation. Moreover, Joyce admits that in nonkosher supermarkets, the Union represents deli and appetizing clerks, along with meat department employees in one unit, unless another labor organization represents these other categories of employees. This testimony in addition to further detracting from the contention that the meat department employees are entitled to separate representation highlights clearly the significance if any that should be given to Joyce's testimony in this area.

Thus, it appears that if Joyce is to be believed, industry practice demonstrates that the decision as to which employees the Union represents in these butcher shops or supermarkets is determined not by any examination of community of interest standards, or skills of meat department employees, but solely based on what other labor organization, if any, represents the other employees in the particular store. Therefore, I conclude that even if Joyce is credited, his testimony

²² I note in this regard, that although I have not credited Neuhaus or Scher in most instances with respect to their testimony concerning the alleged unfair labor practices, I found them believable in this area. I note that such testimony was corroborated in part by employees Zielinski, Mojica, and Tapia, as well as in some instances by Alvarez or Rosenberg, General Counsel's own witnesses.

does not establish an industry practice that supports the General Counsel's contention that a separate unit of meat department employees is appropriate. Indeed if anything, such testimony as I have detailed above supports the contrary view.

I would also note that in *Hall's*, supra, the Board found the unit inappropriate notwithstanding evidence of industry practice in separate units, observing that "evidence that this Petitioner represents separate meat department units in other area stores will not suffice to make appropriate a unit of meat department employees who perform relatively simple tasks in the handling of boxed and prepackaged meat." 281 NLRB at 1117-1118.

Finally, the General Counsel falls back on the proposition that a labor organization need not seek representation in the most appropriate or the broadest appropriate unit, but only an appropriate unit. *Bamberger's Paramus*, 151 NLRB 748, 751 (1965); *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Purity Food Stores*, 160 NLRB 651 (1966). Although this statement of the law is accurate and correct, it is insufficient to establish that an appropriate unit has been proven in the instant matter. The fact that meat department employees work in an enclosed area, work primarily with or on meat products, and exercise some skills different from that of other employees is not enough to warrant representation in a separate unit. The General Counsel's evidence has established little more, and he has not, based on the overwhelming weight of Board precedent which I have referred to above, met his burden of proving that the Union has sought recognition in an appropriate unit.

The General Counsel having failed to establish this crucial allegation of the complaint, I cannot find that Respondent was obligated to bargain with the Union or that it has violated the Act, by refusing to do so. I shall therefore recommend dismissal of these allegations in the complaint.

Having made such a finding, it becomes unnecessary for me to decide whether a bargaining order would be warranted under *NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969), standards and/or whether as Respondent contends the violence committed by the Union on September 7 warrants a denial of a bargaining order. *Laura Modes Co.*, 144 NLRB 1592 (1963).

However, in the event that the Board finds the unit sought to be appropriate, I do deem it helpful to briefly state my views on these issues to avoid the necessity of a remand should my unit findings be reversed.

I am in full agreement with the General Counsel that a bargaining order would be warranted (assuming an appropriate unit) in view of the small size of the unit, the unlawful discharge of nearly 50 percent of the unit, as well as the significant 8(a)(1) and (2) conduct committed by high-level officials of Respondent. In these circumstances, the possibility of holding a free and fair election is slight, the unfair labor practices had a tendency to undermine the Union's majority strength, and a bargaining order is justified. *NLRB v. Solboro Knitting Mills*, 572 F.2d 936, 944 (2d Cir. 1978); *NLRB v. Balsam Village Manage Co.*, 792 F.2d 29, 33-34 (2d Cir. 1986); *Highland Plastics*, 256 NLRB 146, 147 (1981).

I am also in agreement with the General Counsel and the Charging Party that the conduct of the Union, during the September 7 "demonstration," does not warrant the withholding of a bargaining order under *Laura Modes* and its progeny. Here, the violence and intimidation by the Union

and the pickets under its control, although serious, was limited to a short period of time on that day, balanced against several prior months of peaceful and lawful picketing. Moreover, the Union pursued its legal remedies by filing charges and a petition for an election, and the Respondent's unfair labor practices as I have found above were serious and provocative. In such circumstances, where "there were but few instances of misconduct by a relatively small proportion of strikers . . . against a background of Respondent's frequent and recurring unfair labor practices . . . the extraordinary sanction of withholding an otherwise appropriate bargaining order would not best effectuate, the policies of the Act." *Massachusetts Coastal Sea Foods*, 293 NLRB 496, 501 (1989); *New Fairview Hall Convalescent Home*, 206 NLRB 688, 689 (1973), enf'd. 520 F.2d 1316 (2d Cir. 1975), cert. denied 423 U.S. 1053 (1976). See also *Grede Foundries*, 235 NLRB 368 (1978), enf'd. as modified 628 F.2d (D.C. Cir. 1982).

CONCLUSIONS OF LAW

1. The Respondent, Kosher Plaza Supermarket, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. United Food and Commercial Workers Union, Local 342-50, AFL-CIO and Amalgamated Local 5 are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent has violated Section 8(a)(1) of the Act by unlawfully interrogating its employees concerning their support for or activities on behalf of Local 342-50, by inviting employees to quit their employment because of such employees' exercise of activities on behalf of Local 342-50, thereby threatening them with discharge by implying that support for Local 342-50 and continued employment with Respondent are not compatible, and by engaging in surveillance of the union activities of its employees.

4. Respondent has violated Section 8(a)(1) and (2) of the Act by ordering and instructing its employees to sign authorization cards for Amalgamated Local 5, physically assisting employees in filling out authorization cards for Local 5, interrogating its employees concerning whether they signed authorization cards for Local 5, threatening its employees with discharge unless they signed authorization cards for Local 5, permitting representatives of Local 5 to meet with employees on Respondent's premises during worktime and to distribute authorization cards to its employees, and denying representatives from Local 342-50 the same rights and access to meet with its employees on worktime on its premises.

5. Respondent has violated Section 8(a)(1) and (3) of the Act by changing the working hours of Ronald Feldman, and by discharging Feldman, Sergio Alvarez, Alex Rosenberg, and Igor Broymann because of their activities on behalf of and support for Local 342-50, and their exercise of other protected conduct.

6. The strike engaged in by employees of Respondent commencing on June 4, 1992, was caused in part by unfair labor practices committed by Respondent and was an unfair labor practice strike.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

8. Respondent did not engage in any other unfair labor practices alleged in the complaint.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (2), and (3) of the Act, I shall recommend that it take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent discriminatorily discharged Feldman, Alvarez, Rosenberg, and Broymtan, it is appropriate that Respondent be ordered to reinstate these employees to their former positions of employment, or if these positions no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges, and to make whole these employees for any loss of earnings or benefits that they may have suffered. Loss of earnings shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and shall include interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

I shall also order Respondent to restore the hours of Ronald Feldman to the schedule that had existed prior to June 1, 1992 (i.e., 40 hours per week).

It is also appropriate to order Respondent to expunge from its files any reference to the discharges of Feldman, Alvarez, Broymtan, and Rosenberg, and notify these employees in writing that this has been done and that evidence of such actions will not be used by Respondent as a basis for any future action against them. *Sterling Sugars*, 261 NLRB 172 (1982).

Finally, inasmuch as Respondent has unlawfully denied Local 342-50 the same access to its premises and employees as it had previously granted to Local 5, I shall order that Respondent grant such access on request to representatives of Local 342-50 (i.e., permission to meet with its employees on working time on Respondent's premises). *River Manor*, supra, 224 NLRB at 228.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²³

ORDER

The Respondent, Kosher Plaza Supermarket, Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees concerning their support for or activities on behalf of Local 342-50, or whether they signed authorization cards for Local 5.

(b) Threatening its employees with discharge unless they signed authorization cards for Local 5, or inviting employees to quit their employment because of such employees' exercise of activities on behalf of Local 342-50 thereby threatening them with discharge by implying that support for Local 342-50 and continued employment with Respondent is not compatible.

(c) Engaging in surveillance of the union activities of its employees.

(d) Permitting representatives of Local 5 to meet with its employees and to distribute authorization cards to the employees on Respondent's premises during worktime, while

denying representatives from Local 342-50 the same rights and access to meet with such employees on worktime and on its premises.

(e) Ordering and instructing its employees to attend a meeting with representatives of Local 5, or to sign authorization cards for Local 5, or attending meetings conducted by Local 5 with its employees, or physically assisting its employees in filling out authorization cards for Local 5.

(f) Discharging or changing the work hours of its employees, because of its employees' support for or activities on behalf of Local 342-50, or because they engaged in other protected concerted activity.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Ronald Feldman, Alex Rosenberg, Sergio Alvarez, and Igor Broymtan immediate and full reinstatement to their former jobs or, if those positions no longer exist, to substantially equivalent positions of employment, without prejudice to their seniority or any other rights and privileges previously enjoyed.

(b) Make whole Feldman, Rosenberg, Alvarez, and Broymtan for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Remove from its files any reference to the discharges of Feldman, Alvarez, Broymtan, and Rosenberg and notify these employees in writing that this has been done, and that evidence of these unlawful actions will not be used against them in any way.

(d) Restore the hours and schedule that existed prior to June 1, 1992, for Ronald Feldman.

(e) On request, provide to representatives of Local 342-50 access to its premises and the right to meet with its employees on worktime.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."²⁴ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the complaint be dismissed insofar as it alleges violations not found.

²³If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

²⁴If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."